

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA

v.

JEREMY BROWN

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NO. 3:04-CR-137

MEMORANDUM AND ORDER

Before the Court is Defendant's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 52(b) [Doc. 55]. Defendant seeks relief from this Court's judgment dismissing his case under 28 U.S.C. § 2255.

On June 21, 2002, Defendant burglarized his aunt's residence and stole several firearms, which, over the next few days, he used to commit three armed robberies [Doc. 16]. Defendant subsequently pled guilty to one count of possessing a stolen firearm, in violation of 18 U.S.C. § 922(j); two counts of Hobbs Act robbery, in violation of 18 U.S.C. § 1951; and one count of using, carrying, and brandishing a firearm during one of the Hobbs Act robberies, in violation of 18usc 924(c) [Doc. 15]. On July 22, 2005, Defendant was sentenced to 209 months imprisonment [Doc. 18]. No direct appeal was taken. Defendant is scheduled for release from the Bureau of Prisons on August 16, 2025.

Over seven years later, on January 7, 2013, Defendant filed a § 2255 motion in which he alleged numerous grounds of ineffective assistance of counsel and prosecutorial

misconduct [Doc. 31]. The motion was denied on September 28, 2016 [Doc. 53]. Defendant filed the instant motion under Federal Rule of Civil Procedure 52(b) on November 21, 2016 alleging plain error in the calculation of his criminal history points at sentencing [Doc. 55]. Defendant's motion is untimely and is denied.

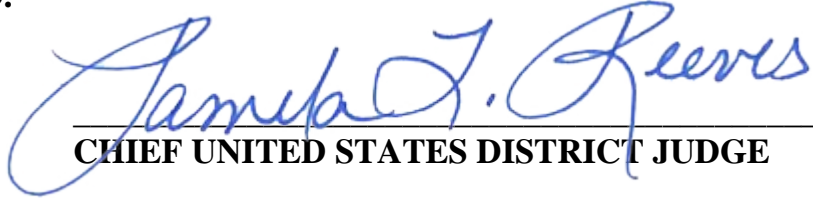
Rule 52(b) provides: "On a party's motion filed no later than 28 days after the entry of judgment, the Court may amend its findings – or make additional findings – and may amend the judgment accordingly. It is undisputed that Defendant's motion was filed beyond the 28 days prescribed for by Rule 52(b). Accordingly, Defendant's motion for relief from judgment under Rule 52(b) is **DENIED**.

Should defendant filed a notice of appeal from this decision, he is **DENIED** a certificate of appealability (COA) because reasonable jurists could not disagree with the Court's denial of the Rule 52(b) motion and could not conclude that issues presented in the motion are "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Finally, the court **CERTIFIES** that any appeal from this action would not be taken in good faith. F.R.C.P. 24(a) and **DENIES** defendant leave to proceed *in forma pauperis* on appeal.

The Clerk is directed to mail a copy of this Memorandum and Order to Jeremy Brown, # 31123-074, Coleman I, U.S. Penitentiary, Inmate Mail/Parcels, P.O. Box 1033, Coleman, FL 33521.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE